IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4952 OF 2003

M/s. G. Nawaz Construction .. Petitioner

Vs.

1. Mohamad Hanif Sultan Qureshi
(since deceased) & Ors. .. Respondents

Mr. G.S. Godbole for petitioner.
Mr. A.A. Garge for respondent nos.2 and 3.

CORAM: B.H. MARLAPALLE, J.

Date : June 15, 2006.

P.C.:

1. Heard Mr. Godbole, the learned counsel for the petitioner and Mr. Garge, the learned counsel for the respondent nos.2 and 3.

2. This petition under Article 227 of the Constitution arises from the order passed by the learned 2nd Joint Civil Judge, Senior Division, Pune on 16/10/2002 allowing the amendment application filed at Exh.34 under Order VI Rule 17 of the C.P.C. in Special Civil Suit No. 208 of 2000.

3. The plaintiff had by an agreement dated

9/1/1994 awarded the development contract to the defendant, present petitioner-firm and the plans were approved by the Pune Municipal Corporation on 4/5/1996 and consequently the construction started sometimes in May, 1996. On account some differences between the parties, the plaintiff issued a notice dated 1/8/1998 terminating the contract and thereafter filed Special Civil Suit No.208 of 2000 for the relief of declaration, possession and injunction.

4. Civil Revision Application No.433 of 2002 was filed initially challenging the impugned order and the same was allowed by granting liberty to the present petitioner to file an additional affidavit to the amendment application which was originally allowed on 30/7/2001 and the said amendment application was directed to be heard afresh by setting aside the said order dated 30/7/2001. The petitioner submitted its additional say to the amendment application on 8/8/2002 and the impugned order was passed on 16/10/2002.

5. In the proposed amendment, the plaintiff had

prayed for alternative reliefs in terms of monetary damages quantified at Rs.93 lacs and/or specific performance of the agreement dated 9/1/1994. The learned Judge of the trial court in the impugned order observed that by allowing the amendments proposed, the nature of the suit was not likely to be changed and the additional reliefs sought were only by way of the alternative reliefs and it would be necessary to decide the inter se rights of the parties in case the relief for declaration that the agreement was terminated was turned down. The learned Judge also noted that the amendment, if allowed, would not cause prejudice to the defendant who would have the liberty to file additional Written Statement, if so advised. This view of the learned Judge of the trial court has been challenged by the petitioner-defendant on the ground that the alternative reliefs sought for could be claimed in a fresh suit and the amendment could not have been permitted and in support of these contentions the learned counsel relied upon the following decisions:-

(a) A.K. Gupta and Sons Ltd. vs. Damodar

Valley Corporation (AIR 1967 SC 96).

(b) M/s. Modi Spinning & Weaving Mills Co. Ltd. and anr. vs. M/s. Ladha Ram & Co. [(1976) 4 SCC 320].

(c) Vineet Kumar vs. Mangal Sain Wadhera (AIR 1985 SC 817).

(d) Heeralal vs. Kalyan Mal and ors. [(1998) 1 SCC 278].

6. None of these decisions are applicable to the facts of this case and, in fact, the view taken by the learned Judge of the trial court is supported by a recent decision of the Apex Court in the case of Rajesh Kumar Aggarwal and ors. vs. K.K. Modi and ors. **[(2006) 4 SCC 385]**. It has been observed, inter alia, that if it was permissible for the appellants to file an independent suit it is incomprehensible why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit and the court should also take notice of

subsequent events in order to shorten the litigation to preserve and safeguard the rights of both parties and to subserve the ends of justice. While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case of in the amendment.

7. In the instant case the amendments sought were for alternative reliefs flowing from the very same agreement dated 9/1/1994 and by way of abundant precaution the alternative reliefs have been sought for. There is no reason, therefore, to interfere in the impugned order in this petition under Article 227 of the Constitution.

8. The petition is, therefore, summarily rejected.

(B.H. Marlapalle,J.)